

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DEVIN WARREN SIZEMORE,

Defendant.

Case No. 6:21-cr-00138-RAW-1

**SUPPLEMENTAL NOTICE
OF INTENT TO OFFER
EXPERT WITNESSES**

COMES NOW the Defendant Devin Sizemore, by and through his assigned counsel, and hereby gives notice to the Court and the Government of the Defendant's intent to offer expert testimony pursuant to Rule 16(a)(1)(G) of the Federal Rules of Criminal Procedure and Rules 702, 703, and 705 of the Federal Rules of Evidence. Mr. Sizemore files this amended notice to supplement his previous notifications of intent to introduce the expert testimony of Scott LaPoint. Dkt Nos. 114, 162. Copies of qualifications (curriculum vitae or biographies) or training and experience have already been provided to the Government.

As previously noted, Dr. LaPoint is a medical doctor specializing in pathology and laboratory medicine. Dr. LaPoint provided autopsy services at Rochester General Hospital in Rochester, New York, and per

diem surgical pathology services at Rochester General and Unity Hospitals. He was the Laboratory Director of the Erie County Public Health Laboratory and a Clinical Assistant Professor of Pathology and Laboratory Medicine at the University of Rochester. He has served as the Deputy Medical Examiner for Monroe County since 2001 and for Erie County in Buffalo, New York since 2011. He currently works as the head of forensic pathology at the Canton-Potsdam Hospital.

In preparation for his testimony, Dr. LaPoint has reviewed the following materials:

- The autopsy and toxicology report by Dr. David Arboe;
- McAlester Reginal Health Center patient records for Emily Sizemore, October 2014 – July 2016;
- Police body camera videos depicting Emily Sizemore's condition and attempts to resuscitate her on the morning of July 15, 2016;
- Krebs Police Department and McAlester Fire Department radio log records for July 14-15, 2016;
- Photographs taken by Deputy Vaughn and Officer House, July 15, 2016;
- McAlester Fire Department records for Devin Sizemore, July 15, 2016;
- McAlester EMS patient care records for Devin Sizemore, July 15, 2016;
- McAlester Regional Health Center patient records for Devin Sizemore on July 15, 2016;
- Pittsburgh County Jail medication records for Devin Sizemore, August 11, 2021;
- Choctaw Nation of Oklahoma medical records for Devin Sizemore, December 2016 – August 2017;

- Eastern Oklahoma Medical Center medical records for Devin Sizemore, December 2013;
- Images of Mr. Sizemore's urine sample, July 15, 2016;
- Prior testimony of Dr. Arboe in State of Oklahoma v. Sizemore;
- Prior testimony of Dr. Riley in State of Oklahoma v. Sizemore;
- Prior testimony of McAlester Police Officer Barnett in State of Oklahoma v. Sizemore;
- Prior testimony of McAlester Police Officer Bedford in State of Oklahoma v. Sizemore;
- Prior testimony of McAlester Police Officer Troussel in State of Oklahoma v. Sizemore;
- Written Statement of McAlester Police Officer Bedford;
- Written Statement of McAlester Police Officer Barnett;
- Written Statement of McAlester Police Officer Kelley;
- Written Statement of Pittsburgh County Deputy Sheriff Wall;
- Written Statement of Pittsburgh County Deputy Sheriff Vaughn;
- Written Statement of Krebs Police Officer Jack Suter;
- OSBI interview statement of Margie Harris, July 15, 2016;
- OSBI interview statement of Sally Steed, July 25, 2016;
- OSBI interview statement of Mark and Christina Sam, July 25, 2016;
- OSBI interview statement of Tina Lanham, July 20, 2016;
- OSBI interview statement of Brianna Higgs, July 19, 2016;
- OSBI Special Agent Jones's affidavit of probable cause
- Recorded interrogation by OSBI Agent Jones of Devin Sizemore, with transcript;
- Police Body Cameras depicting Devin Sizemore's hospital treatment on July 15, 2016
- Body Cameras depicting Dr. Riley and law enforcement officers informing Sam family of Emily Sizemore's death, July 15, 2016;

Depending on the testimony of Dr. Arboe, Dr. LaPoint may be called to provide rebuttal testimony concerning the cause and manner of Emily Sizemore's death. In addition, depending on the testimony of Dr. Donald

Riley, Dr. LaPoint may be called to provide rebuttal testimony concerning Mr. Sizemore's physical condition following his arrest.

Dr. LaPoint has not prepared a report in connection with this case. Nor has he authored a publication within the last 10 years.

In the past four years, Dr. LaPoint has testified in the following court proceedings:

Case	Date
Kathryn Robertson v. Deitz	5/10/2019
Estate of Peter Hunter	5/22/2019
Powell v. Smith	5/20/2019
People v. Charnetsky (NY)	6/3/2019; 6/29/2019
Federal RICO Case (Buffalo, NY)*	2/6/2020
Gonzalez*	6/15/2020
Puglia*	12/12/2020
Clark v. Deputy Matthew Donnelly	4/9/2021
People v. Kelly Axtell (NY)	6/1/2021
People v. Jason Washington (NY)	6/2021
Tracy Isaman v. Cattaraugus County	7/29/2021

* Dr. LaPoint cannot recall the full name of these cases.

United States. v. Isaiah Spain	8/13/2021
People v. Krauseneck (NY)	9/22/2021; 9/21/2022
Estate of Rahssan Smith	10/26/2021
People v. Oropollo (NY)	4/25/2022
Ramsey v. Vicky Stephens	6/2/2022
United States v. Arrington	9/13/2022
Jones v. Swepi LP	11/14/2022
Maglies*	1/19/2023
People v. John Doe (NY)	2/2/2023

I, Scott LaPoint, have reviewed and approve of this disclosure.

/s/
 Scott LaPoint
 March 22, 2023

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Respectfully submitted,

/s/
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Certificate of Electronic Filing and Service

This is to certify that on this 22nd day of March, 2023, I caused the foregoing instrument to be filed with the Clerk of the Court using the ECF System for filing, with electronic service to be made via CM/ECF to Lisa Man, AUSA, and Gerald Collins, AUSA. To counsel's knowledge, there are no non-ECF registrants who are counsel in this case.

/s/

Lisa A. Peebles
Federal Public Defender